

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD PERRY BRYANT,

Defendant-Appellant.

---

UNPUBLISHED

March 6, 2007

No. 247039

Wayne Circuit Court

LC No. 02-005508

ON REMAND

Before: Cavanagh, P.J., and Jansen and Saad, JJ.

PER CURIAM.

This case is before us on remand from our Supreme Court for reconsideration of defendant's Confrontation Clause claim in light of *Davis v Washington*, \_\_\_ US \_\_\_; 126 S Ct 2266; 165 L Ed 2d 224 (2006). We, again, affirm defendant's convictions of second-degree murder, MCL 750.317, felony firearm, MCL 750.227b, and felon in possession, MCL 750.224f.

The Sixth Amendment of the United States Constitution guarantees the right of a criminal accused "to be confronted with the witnesses against him. . . ." See, also, Const 1963, art 1, § 20. In 2004, the United States Supreme Court articulated a bright-line rule against admission of custodial statements by a nontestifying witness against a criminal defendant. *Crawford v Washington*, 541 US 36, 68; 124 S Ct 1354; 158 L Ed 2d 177 (2004). The Court held that the Confrontation Clause recognizes confrontation, or cross-examination, as an indispensable means of testing the truthfulness of testimonial assertions, and does not admit of substitution by other means. *Id.* Accordingly, the Confrontation Clause bars "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination." *Id.* at 53-54. The Court elected not to attempt to set forth comprehensive criteria for determining what constituted testimonial statements for this purpose. *Id.* at 53 n 4.

In *Davis*, *supra* at 2273-2274, the United States Supreme Court refined its definition of testimonial statements, holding:

Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such

ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

In that case, an issue was whether a domestic violence victim's statements made in response to a 911 operator's interrogation were testimonial. The *Davis* Court stated that the question, "then, is whether, objectively considered, the interrogation that took place in the course of the 911 call produced testimonial statements."

The *Davis* Court considered the factual circumstances presented, noting that (1) the statements were made "about events as they were actually happening," (2) "any reasonable listener would recognize that [the victim] was facing an ongoing emergency and that the call "was plainly a call for help against bona fide physical threat," (3) "the nature of what was asked and answered in *Davis*, again viewed objectively, was such that the elicited statements were necessary to be able to resolve the present emergency, rather than to simply learn what had happened in the past," and (4) the statements were not formally taken in that they were made by the victim while in a frantic state, over the phone, in an environment that was neither tranquil nor safe. *Id.* at 2276-2277. The Court concluded that the circumstances of the interrogation objectively indicated that "its primary purpose was to enable police assistance to meet an ongoing emergency. She simply was not acting as a witness; she was not testifying. What she said was not 'a weaker substitute for live testimony.'" *Id.* at 2277.

Here, defendant claims that Anthony Covington's statements to police before he died of gunshot wounds were testimonial in nature; therefore, defendant's rights under the Confrontation Clause, US Const, Am VI, were violated by their admission into evidence. Again, after review for plain error affecting defendant's substantial rights, we disagree.<sup>1</sup> See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

The record reveals that, at about 3:30 a.m., the police responded to a radio run involving a man shot at a gas station. The first three police officers arrived at the gas station within a couple minutes of receiving the call and found the victim, Covington, laying on the ground, on the driver's side of his vehicle, between the first set of gas pumps and the front door of the station. Two other officers arrived shortly thereafter. The officers did not know if the shooting occurred at the gas station and the gas station clerk, who called for assistance, did not know where it happened. Covington was in obvious pain—as the officers concluded by his moaning, facial expressions, difficulty breathing, and difficulty talking. The officers consistently testified that they approached Covington and asked what happened.<sup>2</sup> Covington replied that he had been shot and that "Rick" shot him. He was asked where it happened, and Covington said that he was shot at a house on the corner of Pennsylvania, which he proceeded to describe. Covington further indicated that he had been standing at a closed door of the house on Pennsylvania having

---

<sup>1</sup> Defendant raised this issue for the first time on appeal.

<sup>2</sup> The police officer testimony conflicts as to which officer was the first to speak to Covington but all fairly consistently testified as to the questions that were asked and the progression of the questioning, although Covington may have volunteered some of the information unaided by questioning.

a conversation with somebody through the door, whose voice he recognized as Rick's, when shots were fired through the door and he was hit. Covington was asked to describe "Rick" and he gave a description of "Rick."

Defendant argues that Covington's statements were testimonial because they resulted from police questioning aimed at developing evidence relevant to past criminal behavior. Defendant claims that there were no exigent circumstances, nor any immediate threat to Covington because he was not at the scene of the actual shooting at the time the statements were made. Defendant's argument is flawed.

The police were, indeed, responding to an emergency—someone at the gas station was shot and laying on the ground. They approached the person laying on the ground in obvious distress, not knowing for sure whether he was the purported shooting victim, and asked "what happened?" Covington replied that he was shot and that "Rick" shot him. The police asked Covington where the shooting occurred. Covington said that he was shot at a house on the corner of Pennsylvania and he described the house, as well as the circumstances of the shooting. Covington was asked to describe "Rick." The questioning was used to establish (1) if Covington was the shooting victim, (2) if the shooting occurred at the gas station and, thus, whether there was a continuing threat to their safety and the public's safety, and (3) whether the shooter, as described, followed Covington to the gas station, which was only a few blocks from the house on Pennsylvania, and was still at the gas station. Further, the statements were about an event that had just happened, Covington was obviously critically injured, and the statements were made while he was lying on the ground in great physical distress. In sum, Covington's statements were made in the course of a police interrogation under circumstances objectively indicating that its primary purpose was to enable police assistance to meet an ongoing emergency.

We are cognizant of the fact that Covington's statements would also assist the police in their investigation of the shooting. But, the focus of the analysis is on the *primary* purpose of the interrogation. Here, the police officers were faced with a shooting—the victim was on the ground, in obvious distress, and it was unknown when or where the shooting occurred. The five police officers who responded to the emergency call had virtually no information and had to assess the potentially dangerous situation as quickly as possible in an attempt to secure the victim's, their own, and the general public's safety. The questions they asked Covington were consistent with that purpose. Although the information garnered from the questioning was used in the ensuing investigation and later criminal prosecution, the statements made by Covington to the police in the course of the interrogation were nontestimonial and not subject to the Confrontation Clause. Therefore, defendant has failed to establish plain error affecting his substantial rights. See *Carines, supra*. In light of our resolution of this issue, defendant's sufficiency of the evidence claim, again, fails.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Kathleen Jansen  
/s/ Henry William Saad